

U.S. population. These terrorists are weapons proficient. They are innovative and they are persistent. Al Qaeda will continue to seek to acquire chemical, biological, radiological and nuclear material for attack; and they will use them given the opportunity. This is the threat we face today and one that our intelligence community is challenged to counter. So says Admiral McConnell.

This is the real issue, the 800-pound gorilla in the room, if you will, which remains the central question before us: How do we best protect America and the American people from another cataclysmic event? I do not believe it is good enough for us to say we are preparing to respond to an attack. I believe what we need to do is to prepare to prevent such an attack.

As I have suggested before, when you assess the risk which allows us a proper assessment to be able to determine how we best array our resources against such an attack, we need to have threat, plus vulnerability, plus consequence. And the only way you can assess threat is by having proper intelligence.

As the National Security Estimate makes clear, those who seek to kill us continue in their resolve to, once again, inflict mass casualties upon our Nation. The threat is still there. Although we have been successful in thwarting another attack since 9/11, there are no guarantees in this business. In fact, if you would look at the polls that I've seen most recently, you will find that something like 70 percent of the American people, in fact I believe it is 73 percent of the American people in the latest poll I saw, believe that we, that the U.S. Government, has been effective in forestalling a terrorist attack on our shores. However, 57 percent believe that we are less safe. So you put those two things together, you try and figure out what the American people are saying. I think what we are saying is they believe that many of the things that we have done in government with the support of the American people and the funding of the American people have been successful in forestalling a terrorist attack on American shores, but they know that al Qaeda and their affiliates and associates have not been deterred to the extent that they are still trying to do us harm.

So they see a continuing problem, and they expect us to see the continuing problem and bring us the efforts necessary to protect against a successful attack as seen from the other side.

Independent sources such as Brian Jenkins in the RAND Corporation have stressed that intelligence capability is a key element in our effort to protect our homeland. He states this: "In the terror attacks since 9/11, we have seen combinations of local conspiracies inspired by, assisted by, and guided by al Qaeda's central leadership. It is essential that while protecting the basic

rights of American citizens, we find ways to facilitate the collection and exchange of intelligence across national and bureaucratic borders."

In this regard, Admiral McConnell came before us last August asking for changes in the 1978 FISA Act. When you think about it, a definition of "electronic surveillance" constructed almost 28 years ago certainly could not have kept pace with changes in technology. Ironically, as I said, when FISA was first enacted, almost all international communications were wireless. The cell phone did not even exist. Although the revolution in telecommunications technology has improved the quality of all of our lives, it has taken a quantum leap beyond the law.

When FISA was passed in 1978, almost all local calls were on a wire and almost all international calls were wireless. However, now the situation is upside down. International communications which would have been wireless 29 years ago are now transmitted by wire. While wireless radio and satellite communications were excluded from FISA's coverage in 1978, certain wire or fiber optic transmissions fell under the definition of electronic surveillance. Thus, changes in technology have brought communications within the scope of FISA which Congress never intended to cover in 1978.

Similarly, the rise of a global telecommunications network rendered irrelevant the premium placed on geographic location by the 1978 act. As Admiral McConnell explained to our committee, it is the Judiciary Committee, in the old days location was much easier. Today, with mobile communications, it is much more difficult.

So a target can move around. So the evolution of communications over time has made it much more difficult. So what we were attempting to do is get us back to 1978 so we could do our business and legitimately target foreign targets and keep track of threats and respect the privacy rights of Americans. Because a cell phone, he continued, for example, with a foreign number, GSM system, theoretically could come into the United States and you wouldn't appreciate it had changed. So you would have to now work that problem, and if you did then determine that it was in the United States and you had a legitimate foreign intelligence interest, at that point, you have to get a warrant.

It was with this backdrop that we enacted the Protect America Act this past August. According to Admiral McConnell, this act has provided us with the tools to close our gaps in our foreign intelligence collection. Think of that. That is what the 9/11 Commission asked us to do, close those gaps. He found those gaps that were at least as wide and even wider following the decision by the FISA Court earlier this year. He said, and says, that the bill we passed in August has closed those gaps.

He described five pillars in the important new law. First, it clarified the

definition of electronic surveillance under FISA that it would not be interpreted to include surveillance directed at a person reasonably believed to be located outside the U.S. Under the law, it is not required for our intelligence community to obtain a FISA warrant when the subject of the surveillance is a foreign intelligence target located outside the U.S. This important element of the law is entirely consistent with the legislative history of the 1978 act. As I previously mentioned, it was not intended to reach foreign intelligence outside the U.S.

The second pillar of the act we passed in August establishes a role for the FISA Court in determining that the procedures used by the intelligence community are reasonable in terms of their capacity to determine that surveillance target is outside the U.S. The third pillar of the act provides the Attorney General and the Director of National Intelligence with the authority to direct communications providers to provide information, facilities and assistance necessary to obtain other information when targeting foreign intelligence targets outside the U.S.

The corollary of this obligation to provide intelligence information is the fourth pillar which establishes liability protection for private parties who assist the intelligence community when complying with a lawful direction under the law.

Finally, the law continues the requirement that the intelligence community must obtain a court order to conduct electronic surveillance or a physical search when the targeted person is located in the U.S.

Admiral McConnell defined the concept of the gap to be closed to mean foreign intelligence information that we should have been collecting. I am sure that most Americans would agree with the admiral that in a world with weapons of mass destruction there is no room for gaps in our intelligence capacity. Let me repeat: this is the considered judgment of a career officer in the U.S. Navy who headed the National Security Agency under President Clinton for 4 years and who now serves as the Director of National Intelligence. It is his considered judgment that the changes we made in the law in August were necessary.

Although it was scheduled to sunset 180 days after enactment on February 5, the ink was hardly dry before the left-wing blogosphere was going bananas. Now, don't get my wrong. I defend the right of any American to scrutinize and seek a different course concerning our national security policy. However, based on Admiral McConnell's service to his country to Democrat and Republican administrations, I would suggest that those who seek substantive changes in what he has told us to be necessary should face a heavy burden of proof. In fact, in his appearance before the Judiciary Committee while reserving the right to see the fine print, he indicated he himself was open